

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION)	CASE NO. 1:17-MD-2804
OPIATE LITIGATION)	
)	SPECIAL MASTER COHEN
THIS DOCUMENT RELATES TO:)	
<i>“All Cases”</i>)	DISCOVERY RULING NO. 14, PART 14
)	REGARDING CUYAHOGA COUNTY’S
)	PRIVILEGE CLAIMS

During Track One discovery, plaintiff Cuyahoga County (“Cuyahoga”) withheld production of certain documents based on attorney-client privilege. Walgreens took issue with a number of those decisions, and the parties engaged in a productive meet-and-confer process that narrowed the number of disputed documents. Walgreens requested *in camera* review of a sample of 33 of these documents. Cuyahoga has submitted all 33 of the disputed documents to the Special Master for *in camera* review, and both parties submitted a chart summarizing their arguments regarding each contested document. Cuyahoga also agreed to downgrade and produce nine of these documents in their entirety and another seven with redactions to protect the personal health information of individuals. The Special Master assumes those redactions will not be broader than necessary. If Walgreens believes the redactions to be excessive, it may ask the Special Master to review them.

Having reviewed the parties’ submissions on the remaining documents, the Special Master now rules as shown in the chart below. The Special Master has applied the legal standards and authorities set out in all prior “Discovery Rulings No. 14, Part x,” and incorporates them by

reference.¹ *See, e.g., Ziegler v. Allstate Ins. Co.*, 2007 WL 1087607 at *1 (N.D. Ohio Apr. 9, 2007) (a “communication is not privileged simply because it is made by or to a person who happens to be an attorney. To be privileged, the communication must have the *primary* purpose of soliciting legal, rather than business, advice.”) (internal quotation marks and citations omitted, emphasis in original); *see also Fed. Trade Comm’n v. Abbvie, Inc.*, 2015 WL 8623076 at *9 (E.D. Pa. Dec. 14, 2015) (“attorney-client privilege does not apply . . . if the client seeks regulatory advice for a business purpose”). Also, when asserting attorney-client privilege, “[t]he burden of establishing the existence of the privilege rests with the person asserting it.” *United States v. Dakota*, 197 F.3d 821 at 825 (6th Cir. 2000). “Claims of attorney-client privilege are ‘narrowly construed because [the privilege] reduces the amount of information discoverable during the course of a lawsuit.’” *In re Columbia/HCA*, 293 F.3d 289 at 294 (quoting *United States v. Collins*, 128 F.3d 313, 320 (6th Cir. 1997)).

CUYAHOGA ESI 004050540	Overruled
CUYAHOGA ESI 004050186	Sustained
CUYAHOGA ESI 004046138	Sustained
CUYAHOGA ESI 004044403	Sustained
CUYAHOGA ESI 004041384	Sustained
CUYAHOGA ESI 003241333	Sustained
CUYAHOGA ESI 001660197	Sustained
CUYAHOGA ESI 001660249	Sustained
CUYAHOGA ESI 003237446	Overruled
CUYAHOGA ESI 004045087	Overruled
CUYAHOGA ESI 004051455	Overruled
CUYAHOGA ESI 004051736	Sustained
CUYAHOGA ESI 003236359	Sustained
CUYAHOGA ESI 003245300	Sustained
CUYAHOGA ESI 003245301	Sustained
CUYAHOGA ESI 003178670	Sustained
CUYAHOGA ESI 003161028	Sustained

¹ *See, e.g.*, docket nos. 1321, 1353, 1359, 1380, 1387, 1395, 1498, 1593, 1610, and 1666.

Plaintiffs shall produce to defendants those documents listed above where the claim of privilege is overruled. If any party chooses to object to this ruling, it must do so on or before September 25, 2020.

RESPECTFULLY SUBMITTED,

/s/ David R. Cohen
David R. Cohen
Special Master

Dated: September 18, 2020